with each other using one of the other interconnection arrangements defined elsewhere in this Agreement.

11.6.3. Maintenance Responsibilities: Each Party will be responsible for maintaining its network on its side of the Mid Span point. In the case where a maintenance problem must be resolved in the fiber span between the Parties, the Party with access to the manholes, vaults or conduit space will dispatch maintenance personnel to perform any necessary trouble isolation and repair activities. The Party performing the maintenance activity in the fiber span may bill the other Party for such activity at one-half the hourly labor rate specified in the Maintenance of Service section of this Agreement. Should both Parties have maintenance access to some portions of the manholes, vaults or conduit space on the Mid Span Meet facility arrangement, they will cooperatively determine which Party will perform any trouble isolation or maintenance activities during the initial contact between them when a maintenance problem has occurred.

Prior to the establishment of any Mid Span Meet arrangement, the Parties agree to jointly develop all additional necessary requirements for such interconnection, including but not limited to such items as control and assignment of facilities within the fiber Mid Span Meet arrangement, network management requirements, and operational testing and acceptance requirements for installation of Mid Span Meets.

12. MEET POINT BILLING ARRANGEMENTS

12.1. Covad and Pacific will establish meet-point billing ("MPB") arrangements for jointly provided switched access to an IXC, in accordance with the Meet Point Billing guidelines adopted by and contained in the OBF's MECAB and MECOD documents, except as modified herein. Both Parties will use their best reasonable efforts, individually and collectively, to maintain provisions in their respective federal and state access tariffs, and provisions within the National Exchange Carrier Association ("NECA") Tariff No. 4, or any successor tariff to reflect the MPB arrangements identified in this Agreement, in MECAB and in MECOD.

12.2. Covad and Pacific will implement the "Multiple Bill/Single Tariff" option in order to bill any ("IXC") for that portion of the network elements provided by Covad or Pacific. For all traffic carried over the MPB arrangement, Covad and Pacific shall each bill the IXC for its own portion of the applicable elements.

12.3. Each Party shall provide the billing name, billing address, and carrier identification code ("CIC") of the IXCs that may utilize any portion of Covad's network in a Covad/Pacific MPB arrangement in order to comply with the MPB Notification process as outlined in the MECAB document. Each Party will be entitled to reject a record that does not contain a CIC code. Such information

34. GOOD FAITH PERFORMANCE

In the performance of their obligations under this Agreement, the Parties shall act in good faith and consistently with the intent of the Act. Where notice, approval or similar action by a Party is permitted or required by any provision of this Agreement (including, without limitation of the obligation of the Parties to further negotiate the resolution of new or open issues under this Agreement), such action shall not be unreasonably delayed, withheld or conditioned.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective duly authorized representatives.

Lee Bauman

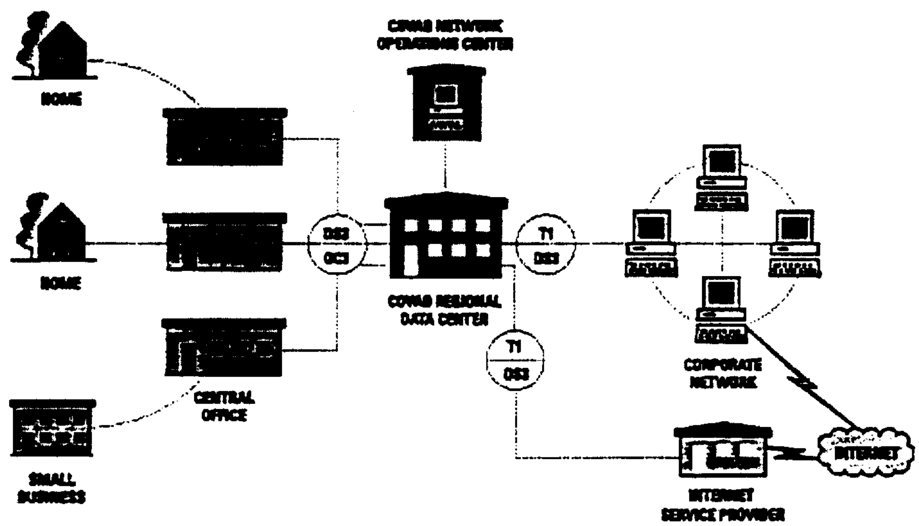
Vice President
Local Competition
Pacific

Charles J. McMinn

President and CEO
Covad Communications Company

EXHIBIT B

Covad Network



DSL technology, coupled with Covad's Regional Network, provides a fast, secure access solution.

Covad's DSL service runs over a dedicated copper telephone line from each home or small business to the central office of a local telephone carrier—not over a shared network like cable modems or over the air like wireless solutions.

Covad's Regional Network connects the central office to the corporation or ISP at T1 or DS3 speeds. The resulting end-to-end network is private, digital, and packet-based. Covad provides end-to-end network management, proactively communicating with and supporting corporate network operations.

webmaster@covad.com
Contact Covad at: 1-888-GO-COVAD

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Attorneys for Plaintiff
COVAD COMMUNICATIONS COMPANY

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

COVAD COMMUNICATIONS COMPANY, a California corporation,

Plaintiff,

v.

PACIFIC BELL, a California corporation,

Defendant.

No. 98-01887 SI

DECLARATION OF DAVID SHARNOFF IN SUPPORT OF COVAD COMMUNICATIONS COMPANY'S APPLICATION FOR PRELIMINARY INJUNCTION

Date: **August 14, 1998**
Time: **9:00 a.m.**
Place: **Courtroom 4**
Hon. Susan Illston

I, David Sharnoff, declare as follows:

1. I am the owner and president of Idiom Communications ("Idiom") located in the San Francisco Bay Area. I make this declaration in support of Covad Communications Company's Application for Preliminary Injunction. I have personal knowledge of the facts stated herein, and if called upon could and would testify competently to them.

2. Idiom is a small regional Internet service provider ("ISP"). ISPs provide connections from personal computers or networks to the Internet "backbone." Idiom provides Internet services to small and medium-sized businesses and to residential customers throughout most of Northern California.

3. Customers use any one of several methods for connecting their computer systems to the Internet through their ISP. The majority of Internet users and over 90% of Idiom's customers use ordinary telephone lines, or POTS ("plain old telephone service"), with standard computer modems. The data stream using these modems runs at a maximum 56 kilobits per second (KBPS), and generally lower. These standard connections cause delays and tend to discourage use of the Internet. Pacific Bell provides most of the POTS service in Idiom's service area.

4. Higher speed transmission is also available, primarily through two types of service: ISDN and xDSL. ISDN service has been available for several years from Pacific Bell. Pacific Bell provides the vast majority of local ISDN service in Idiom's service areas. With ISDN service, customers can access the Internet at 128 KBPS, twice the speed the best analog modem/POTS service can provide. Properly marketed, ISDN could have been a useful and popular high-speed alternative to POTS service; however Pacific Bell's pricing structure made ISDN unattractive, and its provisioning of ISDN service has been so poor that it strongly discourages customers from using ISDN. Furthermore, as Pacific Bell offers it, ISDN service does not satisfy the typical Idiom Internet customer's needs because Pacific Bell charges for ISDN based on the time the customer is using ISDN. ISDN service can quickly become prohibitively expensive for a user, because many Internet users remain connected to the Internet over extended periods of time. Because of these quality and expense issues, Pacific Bell's ISDN service is marginalized.

5. In contrast, xDSL service is better suited for Internet use because it is "always on," and xDSL competitors typically charge flat fees, as opposed to the per-minute usage fees Pacific Bell chose to charge for ISDN service. Recently, xDSL service has become

available from several sources, including plaintiff Covad Communications. DSL service provides very high speed connections, up to 1.5 megabits per second, or 30 times faster than the modems that operate on analog telephone lines. Idiom is particularly interested in offering Internet connection with xDSL service because customers and prospective customers are eager for reliable high-speed connections that can be left on all the time.

6. In determining which vendor to use for its xDSL connection, Idiom believed that two factors were crucial: availability and quality. Pacific Bell currently provides xDSL service only on a trial basis in a few isolated areas of the state. I am skeptical that Pacific Bell can provide quality xDSL service because they have designed their xDSL offerings such that very few ISPs can operate with them. In addition, I believe that Pacific Bell has a disincentive for providing good xDSL offerings because those services could cannibalize Pacific's Bell own frame relay services.

7. Idiom has ordered xDSL service from Covad. Currently, approximately 3% of Idiom's customers are using or have ordered Covad xDSL service. Covad's service offerings have been hampered by delays. It is my understanding that many of these delays have been caused by Pacific Bell's failure to deliver useable collocation arrangements in a timely manner. Idiom has lost several customers because of these delays. In fact, approximately 25% of customers that ordered Idiom xDSL service canceled those orders because Covad could not provide service on schedule out of specific central offices.

8. Covad's service is unavailable in certain parts of the Bay Area. It is our understanding that the reason service is unavailable in certain central offices is that Pacific Bell has failed to make collocation space available. Based on the number of potential Idiom customers that have expressed interest in DSL, I estimate that Idiom would have had approximately 50% more DSL customers if Covad had placed equipment in these CO's.

9. Delays in providing high-speed service and unavailability of service are damaging to ISPs and to consumers because lower-speed Internet connections make telecommunicating difficult. Furthermore, lower-speed Internet connections have an adverse

impact on interactive performance when the computer is performing multiple tasks. Widespread availability of high-speed connections will permit many new uses for the Internet, including Internet telephony. Because Covad's service is unavailable in some areas due to these delays and lack of space, we cannot guarantee our end users that high-speed service will be available in their area. These problems limit our ability to market and provide high-speed service to our customers.

10. It is especially important to ISPs that these crucial high-speed connections, such as xDSL, are available from a variety of sources, and not only from Pacific Bell. Competition improves quality of service, lowers costs and improves the breadth of the service offering. Quality is important because service failures can shut down businesses -- both the ISP's business and its customers'. Customer perception that service will be unreliable may discourage Internet use and slow the acceptance of high-speed connection and services dependent on high speed, such as video services and Internet telephony.

11. I understand that Pacific Bell has recently announced that it will be providing ADSL service. Given Pacific Bell's track record, I am skeptical that Pacific Bell can provide quality ADSL service in a timely manner. At the same time, however, if Pacific Bell's practices threaten to delay or foreclose Covad and other xDSL competitors' entry into xDSL service, alternatives for xDSL service will be unacceptable. I am concerned that as a result Pacific Bell will marginalize xDSL service as it has done with ISDN, and consumers and businesses will lose the opportunity to take advantage of high-quality, competitively driven xDSL service

12. I am also concerned that Pacific Bell will compete unfairly against Covad by prematurely announcing services that are ready and offering services out of central offices where they are preventing Covad from offering service.

Executed under penalty of perjury this 12 day of June, 1998.

DAVID SHARNOFF

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

COVAD COMMUNICATIONS COMPANY, a California corporation,

Plaintiff,

v.

PACIFIC BELL, a California corporation,

Defendant.

No. 98-01887 SI

DECLARATION OF MICHAEL GABRYS IN SUPPORT OF COVAD COMMUNICATIONS COMPANY'S APPLICATION FOR PRELIMINARY INJUNCTION

Date: **August 14, 1998**
Time: **9:00 a.m.**
Place: **Courtroom 4**
Hon. Susan Illston

I, Michael Gabrys, declare as follows:

1. I reside in San Francisco, California and together with my roommate Andre Mozes have ordered Covad's TeleSpeed 1.1 service. I have personal knowledge of the facts stated herein, and if called upon could and would testify competently to them.

2. In June 1998, my roommate, Andre Mozes, started work at Covad Communications Company. Consequently, we signed up to have Covad's TeleSpeed 1.1 service provided to our apartment to connect our personal computer to Covad Communication Company's local area network. Our Covad 1.1 service will provide us with a 1.1 megabits per second connection. Previously, we had subscribed to Pacific Bell's ISDN service to connect our personal computer to NetCom, an internet service provider. Pacific Bell ISDN service provided us with a 128 kilobits per second connection, for $32 per month plus a fee based on the time used.

3. On June 5, 1998, I called Pacific Bell to cancel my ISDN service. When the Pacific Bell service representative asked me why I was canceling the ISDN service, I informed him that we were obtaining ADSL service from my roommate's employer, a DSL provider. In response, the Pacific Bell service representative recommended that I wait to cancel ISDN because ADSL's performance was not what people expected.

Executed under penalty of perjury this 14 day of June, 1998.

Michael M Gabrys

Michael Gabrys

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

COVAD COMMUNICATIONS COMPANY, a California corporation,

Plaintiff,

v.

PACIFIC BELL, a California corporation,

Defendant.

No. C 98-1887 SI

DECLARATION OF CHARLES J. HAAS IN SUPPORT OF COVAD COMMUNICATIONS COMPANY'S APPLICATION FOR PRELIMINARY INJUNCTION

Date: **August 14, 1998**
Time: **9:00 a.m.**
Place: **Courtroom 4**
Honorable Susan Illston

I, Charles J. Haas declare,

1. I am one of the founders of plaintiff Covad Communication Company ("Covad") and its Vice President of Sales and Marketing. I have overall responsibility for Covad's sales and marketing efforts, and am familiar with Covad's business plan. I am generally familiar with Covad's competition for providing telecommunications services to telecommuters and Internet service providers and users. I have also been involved in specific implementation

issues to guarantee that Covad actually provides the service that we sell our customers. I have personal knowledge of the facts stated herein, except those stated on information and belief, and if called upon could and would testify competently to them.

2. Covad, founded in October, 1996, and based in Santa Clara, California, is dedicated to providing high-speed telecommunications services in many regions nationwide. In California, it currently provides service in the San Francisco Bay Area and has recently begun serving the Los Angeles metropolitan area. Covad's business plan is to provide a specific type of local telecommunications service: widespread, high-speed connections through Digital Subscriber Line technology, or "DSL."

3. Covad offers DSL in two markets. First, it sells DSL service to Internet service providers, who use DSL to connect their customers to the Internet (the "Local ISP Market"). Second, medium-sized and large businesses use DSL to connect their telecommuting employees to their corporate local area network (the "Local Telecommuter Market"). While end users enjoy the benefits of DSL service, it is the corporations and ISPs, not the end users, who are Covad's customers. There are several competitors offering DSL service in the Local ISP Market, but in many areas of the State Covad has been the first CLEC to offer high speed service in the Telecommuter Market.

4. The technology that telecommuters and Internet users employ can take a variety of forms. Currently most Internet users and telecommuters connect to ISPs or to their company networks using their computer's analog modem and their regular telephone line, or "plain old telephone service" ("POTS"). Pacific Bell provides virtually all of the POTS connections in its traditional service area. The typical analog modem can transmit data at a rate of about 28 kilobits per second ("kbps"); the highest available analog speed is about 56 kbps. These speeds -- though adequate for some uses and much higher than what was available just a few years ago with analog modems -- make work from home slow and inefficient, and cannot provide the speed necessary for many Internet uses.

5. For those needing or wanting higher speeds, there are several options. Pacific sells all of its higher-speed offerings under the brand name FasTrak. First, there is Integrated Services Digital Network service ("ISDN"), available predominantly from the incumbent local exchange carrier, Pacific Bell. ISDN provides connections at rates up to 128 kpbs, faster than analog but much slower than most dedicated services. Pacific's ISDN service is perceived as very poor, and for users who tend to stay connected to their network or the Internet for long periods, ISDN becomes prohibitively expensive because Pacific Bell charges per-minute usage fees in addition to a monthly flat fee.

6. Second, Pacific sells dedicated services, including T1 (and fractional T1), 56 kilobit DDS, Frame Relay offerings and other similar services. Customers pay Pacific a flat monthly fee plus mileage-based fees, in some cases, for these dedicated services. Pacific actively markets its dedicated services to ISPs, their users, and to medium-sized and large businesses, but these services are too expensive for many users.

7. Third, there is DSL. DSL is a digital, packet-switched, high-speed connection from the end user's home to the ISP or corporate network. It provides much faster transmission than POTS or ISDN: depending on their needs, customers can choose a speed from 384 kbps to 1.5 million bps, 10 to 30 times faster than the best analog modem. DSL uses a dedicated local loop for the connection, so it is always on; there is no dialing up. There are no per-minute usage charges. Instead, customers pay a fixed monthly fee. Covad offers DSL service under the TeleSpeed brand name, and other Competitive Local Exchange Carriers ("CLECs") offer DSL as well. Pacific now offers DSL under SBC's FasTrak brand name.

8. Covad's TeleSpeed services compete with Pacific's FasTrak and basic telephone services to meet the needs of the Local ISP Market and the Local Telecommuter Market. DSL currently services only a tiny fraction of these markets, while Pacific maintains an overwhelming share of each.

9. Ubiquity is key to Covad's success. Covad's goal is to provide service not just in select high-density downtown business districts, but to permit telecommuters and Internet

users throughout metropolitan areas to make the high-speed connections they need to access their Internet service providers ("ISPs") and company networks. Thus it is crucial that Covad's service be available everywhere the corporation's employees or ISPs' customers are. Covad has enjoyed some success so far, but its ability to compete for new customers will be limited by its ability to collocate in COs quickly.

10. Covad's relationship with Pacific Bell takes two distinct and sometimes conflicting forms. As a Competitive Local Exchange Carrier ("CLEC") providing local telecommunications services, Covad competes with Pacific Bell. At the same time, Pacific Bell is also Covad's key supplier in Pacific Bell's service area. Covad cannot provide service to any customer in Pacific Bell's regions until it obtains several key services from Pacific Bell:

a. Covad must be able to collocate its equipment in the appropriate central office ("CO"). Pacific Bell owns and controls all of the CO's in its service area. Each CO services a distinct geographic region, such as a single town or part of a city. Often, because Covad is a market leader among CLECs and because Covad's business plan requires that its reach extend far into the suburbs to the homes of telecommuters and Internet users, it is the first CLEC to request collocation space in a given CO.

b. Covad must also order circuits called "transport" to connect these COs to Covad's Regional Data Center. In approximately 80% of the COs in its service area, Pacific Bell is the only supplier that can provide "transport" to a CO. In addition, for each ISP or corporate customer, Covad must also obtain transport to connect the ISP or corporate customer network to Covad's Regional Data Center.

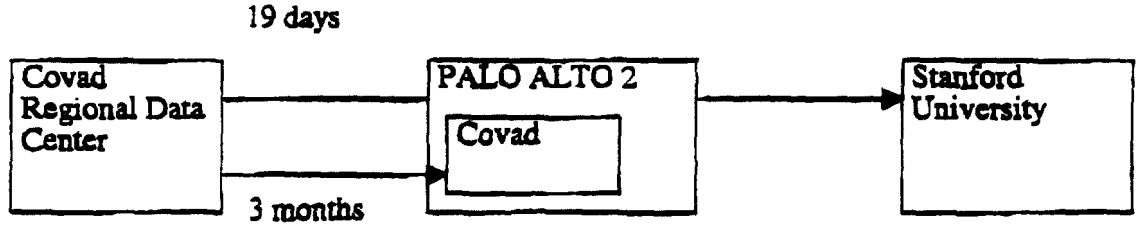
c. Finally, Covad must also obtain "local loops," i.e. the copper lines that connect an individual residence or business to its Pacific Bell CO.

11. I understand that Pacific Bell is required to treat Covad with parity – that is, Pacific Bell must provide Covad the same level of service as it provides itself and its retail customers. The examples below explain how Pacific Bell has been failing to meet its obligations and discriminating against Covad.

12. One of Covad's important potential customers has informed us that Pacific Bell quoted a seven day period for complete installation of its competing ISDN service. At the same time, Pacific Bell has quoted Covad a ten day to fifteen day installation period for the loops that Covad use to offer its DSL service. These loops are the same loops that Pacific Bell uses to install its ISDN service. Obviously, Covad cannot promise customers a seven day installation when Pacific Bell is only committing to ten days for loops – a commitment that Pacific Bell routinely fails to keep.

13. Stanford University ("Stanford") is an important Covad customer. On July 9, 1997, Covad ordered transport, in the form of two T-1 lines, from Pacific Bell to connect Covad's pilot Regional Data Center in Cupertino, California to the central office designated Palo Alto 02. Covad placed its order through Pacific Bell's "ASR" process, the channel from which competitive local exchange carriers ("CLEC") like Covad order service. Despite numerous calls to Pacific Bell requesting that it fill Covad's order, Pacific Bell did not deliver the transport until October 29, 1997 – over three months after the order was placed.

14. Soon after July 23, 1997, Covad also ordered transport from Pacific Bell to connect Stanford's computer network to Covad's Regional Data Center. Covad placed that order through Pacific Bell's standard business office, the channel from which Pacific Bell's takes orders from its own retail business customers. Stanford is served out of the central office designated Palo Alto 02. When we ordered transport, Pacific Bell's retail office informed that the circuit would be provided within 19 business days. In fact, Pacific Bell installed the circuit on August 28, 1997 -- two months faster than Pacific Bell provided the same type of service from the same central office for Covad through its wholesale channel.



15. The failures of Pacific Bell, as supplier, appear to have benefited Pacific Bell, the competitor. On May 27, 1998 Pacific Bell announced that it is offering ADSL service out of several central offices where it had previously informed Covad that there was "no space" for Covad's equipment.

16. Pacific's accelerated DSL rollout is particularly alarming in light of its consistent denial of collocation space and its late delivery of usable collocation cages and transport. During the fall and winter of 1997, Pacific rejected many of Covad's requests for collocation space on the grounds that no space was available. These denials had a negative impact on Covad's ability to sell its services, because, in our experience, our customers desire broad geographic coverage: ISPs want to be able to guarantee DSL service to all of their customers, and businesses want DSL service to be available to all of their telecommuting employees, regardless of where in the region they live. Several customers have complained about Covad's inability to offer service out of specific COs. In addition, customers have been particularly upset when Covad has been late in offering service out of COs because Pacific Bell has failed to meet its cage and transport delivery commitments. One large Covad customer has over 486 telecommuters in COs which Pacific Bell had no space. Covad revenue will be severely affected at this customer by our inability to offer service to their employees. Unable to offer Covad service, our 20 plus ISP partners have been fulfilling orders in these COs (which represent over 350,000 homes and businesses) with Pacific Bell POTS and ISDN lines.

17. On May 14, 1998 Pacific Bell informed Covad that it resurveyed a number of COs throughout California, and, despite having previously denied Covad's applications, has now determined that there is in fact space available in many COs. Pacific has offered to reopen the application process for these COs on a staggered schedule between June and October of 1998. These delays are unacceptable to Covad.

18. In my experience, Covad stood to gain an important advantage in being the first to offer DSL service in given markets. Among other things, it is easier to penetrate a market as the first to offer a service, than to come in later and gain market share simply by taking away

customers of those who are already offering the same service. Differentiation in the eyes of consumers is much more difficult when a company is not the first mover. Pacific's unreasonable initial denial of space has caused Covad to lose months of lead time in marketing its product. If Pacific had not denied space in COs, Covad would have service available in nearly 30 additional COs as of July, 1998, when Pacific plans to introduce its own DSL service. By unfairly denying Covad access to COs, Pacific has effectively robbed Covad of the competitive advantage of being the first to market.

19. Attached hereto as Exhibit A is a true and correct copy of e-mail correspondence Covad received from Chris Metcalfe, a former Covad intern.

I declare under of penalty of perjury that the foregoing is true and correct.

Executed this 15 day of June, 1998.

Charles J. Haas

EXHIBIT A

X-Sender: cmcminn@pop.covad.com
X-Mailer: QUALCOMM Windows Eudora Pro Version 3.0.5 (32)
Date: Tue, 05 May 1998 07:35:26 -0700
To: all@Covad.COM
From: Chuck McMinn <cmcminn@Covad.COM>
Subject: A funny quote for you

It's nice to know we are appreciated!

Chuck

>Date: Tue, 5 May 1998 00:03:12 -0400 (EDT)
>From: Chris Metcalfe <chris@media.mit.edu>
>To: cmcminn@Covad.COM
>cc: rex@Covad.COM
>Subject: A funny quote for you
>
>Chuck,
>
>I wanted to write to say hi, and pass on something a South Western Bell
>engineer said to me while on a recent visit to the Media Lab.
>
>When the topic turned to DSL, I asked her if she had heard of Covad.
>
>"HEARD OF COVAD?!" She exclaimed. "They're the only reason we're doing
>DSL!"
>
>When I pressed her a little more, she went on to say "Covad is doing
>everything we feared a competitor might do. Right now they're all
>that is on our 'radar'"
>
>Needless to say, it brought me great pride to hear someone from SWB say they
>feared a company I saw grow from the ground up! :)
>
>CONGRATS! And keep up the amazing work.
>
>-- Chris
>
>Chris Metcalfe Research Assistant
>http://www.media.mit.edu/~chris voice: 617/253-0185
>Information & Entertainment Section fax: 617/258-6264
>MIT Media Lab, 20 Ames St, Rm. E15-350, Cambridge, MA 02139 USA
>
>

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Attorneys for Plaintiff
COVAD COMMUNICATIONS COMPANY

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

COVAD COMMUNICATIONS COMPANY, a California corporation,

Plaintiff,

v.

PACIFIC BELL, a California corporation,

Defendant.

No. 98-01887 SI

DECLARATION OF CARL MILLER IN SUPPORT OF COVAD COMMUNICATIONS COMPANY'S APPLICATION FOR PRELIMINARY INJUNCTION

Date: **August 14, 1998**
Time: **9:00 a.m.**
Place: **Courtroom 4**
Hon. Susan Illston

I, Carl Miller, declare as follows:

1. I am the Sales Manager for Dedicated Access at Slip.Net, located in San Francisco, California. I make this declaration in support of Covad Communications Company's Application for Preliminary Injunction. I have personal knowledge of the facts stated herein, and if called upon could and would testify competently to them.

2. Slip.Net is an Internet service provider ("ISP"). ISPs provide connections from personal computers or networks to the Internet "backbone." Slip.Net provides nationwide Internet dialup access. In addition, in the San Francisco Bay Area, Slip.Net offers customers "dedicated" access. Dedicated access means that a customer's computers are always connected to the Internet.

3. Customers use any one of several methods for connecting their computer systems to the Internet through their ISP. The vast majority of customers use "POTS" service, that is, ordinary voice telephone lines, with standard computer modems. The data stream using these modems generally runs at about 56 kilobits per second (KBPS), or lower. These standard connections cause delays and tend to discourage use of the Internet. Pacific Bell provides virtually all of the POTS service in its service areas.

4. Higher speed transmission dedicated service is available through four types of service: ISDN, xDSL, frame relay and T1 lines. Frame relay and T1 service are more expensive than ISDN and xDSL and are not viable options for more price sensitive customers. ISDN has been available for several years from Pacific Bell, but has been plagued with installation problems. Pacific Bell is the dominant provider of ISDN service in the San Francisco Bay Area.

5. Since passage of the Telecommunications Act of 1996, xDSL service has become available from several sources, including plaintiff Covad Communications. With xDSL service, customers have the advantage of a dedicated, "always on" direct connection to the Internet. DSL service provides very high speed, up to 1.5 million KPBS, or 30 times faster than the best POTS service.

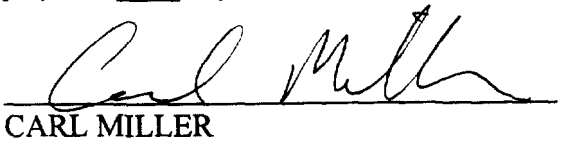
6. Pacific Bell currently provides xDSL service only on a trial basis in a few isolated areas of the state. We have ordered xDSL service from Covad. The CLECs' service offerings have been hampered by delays. It is our understanding that many of these delays have been caused by Pacific Bell's failure to deliver useable collocation cages in a timely manner. Approximately 10% of Slip.Net customers have canceled their orders for xDSL service either

because central offices were late or because transport was delivered late. Covad's service is unavailable in certain parts of the Bay Area and Los Angeles. It is our understanding that the reason service is unavailable in areas served by certain central offices is that Pacific Bell has failed to make collocation space available. Slip.Net turns away approximately 1-3 potential San Francisco Bay Area customers a week because of Covad's lack of coverage in specific central offices.

7. Delays in providing high-speed service and unavailability of service are damaging to ISPs and to consumers because lower-speed Internet connections discourage Internet use and make certain applications, such as intensive web browsing, hosting web pages, and connecting multiple users to the Internet impracticable. Widespread availability of high-speed connections will permit many new uses for the Internet such as allowing ISPs like Slip.Net to provide virtual private networks (a virtual private network allows customers to securely connect computers at several different locations at high speed). Because Covad's services are unavailable in some areas due to these delays and lack of space, we cannot guarantee our end users that high-speed service will be available in their area. These problems limit our ability to market and provide high-speed service to our customers.

8. It is especially important to ISPs that these crucial high-speed connections, such as xDSL, are available from a variety of sources, and not only from Pacific Bell. Slip.Net values competition because it should improve the quality of service and lower prices. Quality is important because service failures can shut down businesses. Customer perception that service will be unreliable may discourage Internet use, or, at a minimum, use of a given ISP.

Executed under penalty of perjury this 12 day of June, 1998.



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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

COVAD COMMUNICATIONS COMPANY, a California corporation,

Plaintiff,

v.

PACIFIC BELL, a California corporation,

Defendant.

No. C 98-1887 SI

EX PARTE MOTION FOR ORDER SHORTENING TIME FOR HEARING ON COVAD COMMUNICATIONS COMPANY'S APPLICATION FOR PRELIMINARY INJUNCTION

Date: **TBD**
Time: **TBD**
Place: **Courtroom 4**
Honorable Susan Illston

MOTION

Plaintiff Covad Communications Corporation ("Covad") moves this Court for an order shortening time to permit its application for a preliminary injunction to be heard no later than July 17, 1998, and to set a briefing schedule accordingly. This ex parte motion is filed pursuant to Civ. L. R. 7-11.

MEMORANDUM OF POINTS AND AUTHORITIES

Covad files today its Application For Preliminary Injunction, seeking to enjoin defendant Pacific Bell ("Pacific") from further antitrust violations stemming from its restriction

of access to Pacific's local telephone network. The injunction would permit Covad to provide Digital Subscriber Line ("DSL") service in all areas of California in which Pacific plans to offer DSL service and in which Covad has previously been denied access to Pacific's network. Under the Court's regular scheduling procedures, the earliest date available to have the motion heard is August 14, 1998. Because Pacific plans a major rollout of its own DSL service this summer, the efficacy of the relief Covad seeks will erode with delay. Covad respectfully asks that the Court hear the motion on July 17, 1998, a date close to the Local Rules' usual 35-day schedule.

A. Pacific Is Violating Antitrust And Unfair Competition Laws And The Telecommunications Act of 1996

Covad is a start-up Competitive Local Exchange Carrier ("CLEC") offering high speed DSL service to Internet Service Providers and to businesses with telecommuting employees. Pacific, the Incumbent Local Exchange Carrier ("ILEC") in most of California, has a monopoly in these markets based on its decades-long history as the dominant local service provider in the State.

Under the Telecommunications Act of 1996 ("Telco Act"), Pacific, as the ILEC, is required to permit CLECs to interconnect with its network and to purchase discrete elements of the network so that they can provide their own services. Despite this obligation, Pacific has systematically hampered Covad in its efforts to market and deploy competing service.

B. Competition May Suffer Irreparably If Covad's Motion Is Delayed Until After Pacific's DSL Deployment

Pacific itself currently offers DSL service only on a trial basis, and only in a few towns in California. But on May 28, Pacific's parent company, SBC, suddenly and triumphantly announced that Pacific Bell that it will begin "broad ADSL deployment" in July. It expects to make its service available to "over 5 million" Californians -- presumably the 4.4 million residential and 650,000 business customers served by the 87 COs in which Pacific will deploy DSL service -- by "*end of summer*." Declaration of Alfred C. Pfeiffer, Jr. in Support of Ex Parte Motion for Order Shortening Time for Hearing on Covad Communications Company's Application for Order Shortening Time ("Pfeiffer Decl."), Ex. A (emphasis added).

Pacific has for months been using unlawful delay tactics to marginalize and hinder its competitors in the markets for ISP and telecommuter data transmission services. Now, Pacific plans a big step toward eliminating competition altogether: deploying its own DSL technology and starting in just a few weeks -- while denying its competitors the facilities they need to compete, or forcing them to wait months for access. If Covad is required to wait until August 14 for the Court to consider its application, Pacific will have gained an enormous competitive advantage. It will be offering DSL service on a broad scale, while simultaneously abusing its monopoly power to block its much smaller rivals from a level competitive playing field.

In fast changing and growing telecommunications markets, the "first mover" advantage is enormous, and a delay of just a few months can make all the difference in the marketplace. *Intergraph Corp. v. Intel Corp.*, 1998-1 Trade Cas. (CCH) ¶ 72,126 at 81,812 (N.D. Ala., April 10, 1998) (even a 30-90 day delay would "prevent [plaintiff] from maintaining a competitive presence in the high-end workstation market"). Pacific's unreasonable initial denial of space has already caused Covad to lose months of valuable time in marketing its product. Declaration of Charles J. Haas in Support of Covad Communications Company's Application for Preliminary Injunction, filed herewith ("Haas Decl."), ¶ 18. Indeed, if Pacific had not unlawfully denied space, Covad would have service available in nearly 30 additional Central Offices as of July, 1998, when Pacific plans to introduce its own DSL service. *Id.* By unfairly denying Covad access to COs, Pacific has effectively robbed Covad of the competitive advantage of being the first to market in many places.

The benefits Pacific reaps from its anticompetitive conduct will multiply with each week that it offers DSL service while it -- literally -- shuts its competitors out of the market by denying them effective access to the network. If Pacific is allowed to abuse its monopoly power to push itself into the "first mover" position in DSL service, offering DSL to 5 million customers by the end of summer, its advantages will quickly become insurmountable, and competition will wither.